IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JAIPUR BENCH JAIPUR.

J U D G M E N T

The Assistant Director/Assessing Authority, Land and Building Tax Department, Hawa Mahal Zone, Jaipur

Versus

Shiv Bhagwan Bhiyani (since deceased) hence, through his Lrs.

****

D.B. CIVIL WRIT PETITION NO.3412/1998

under Articles 226 and 227 of the Constitution of India.

****

Date of Judgment : 2nd July, 2007/5th July 2007.

QUORUM

HON'BLE MR.JUSTICE R.M. LODHA
HON'BLE MR.JUSTICE MOHAMMAD RAFIQ

Mr.Banwari Lal Avasthi, Additional Government Advocate for the State.
Mr. N.K. Joshi with
Mr.Sanjay Joshi for the respondents.

******

2nd July, 2007

Oral Judgment (Per R.M. Lodha, J.)

The Assistant Director Land & Building Tax Department and the State Government have filed this writ petition impugning the judgment & order dated April 29, 1997 passed by the Rajasthan Taxation Tribunal, Jaipur.

2. The brief facts are thus:

Shiv Bhagwan Bhiyani, respondent No.1 and hereinafter referred to as "assessee" filed the return under Rajasthan Land and Building Tax Act, 1964 in respect of the property purchased as Vishnu Bhawan, Tabela Road, Sikar. According to him, he has 1/5th share in the said property.

Alongwith the return, the assessee filed a site plan showing his portion specifically by red lines and the different portions of his brothers. He also placed on record the memorandum of family settlement dated 3/9/1969 and filed affidavits of all the five brothers indicating their separate possession and ownership. Assistant Director Land & Building Tax Department, Sikar (for short, “assessing authority“) passed the order on 27/1/1976 over-ruling the plea of partition. He treated Vishnu Bhawan as one Unit. In appeal, the appellate authority set-aside the order of the assessing authority and remanded the matter back to him for fresh consideration of the matter. On

29/5/1977, the assessing authority accepted the case of the assessee and held that Vishnu Bhawan consisted of six Units and assessee and his brothers owned one of such units separately. That the order dated 29/5/1977 was not challenged in appeal or revision is not in dispute. However, two notices came to be issued to the assessee, the first notice was issued on 31/3/1980 and the other on 3/7/1981. In the notice issued under Section 15-B of the Act of 1964 on 31/3/1980, it was stated that the partition of the building (Vishnu Bhawan) was not effected properly while in the notice dated 3/7/1981, it was stated that at the time of assessment, valuation of the said building was not properly done. The assessee responded

to both the notices and set up diverse grounds challenging the legality and validity thereof.

3. The assessing authority by his order dated 18/8/1981 held that the document of family settlement relied upon by the assessee was compulsorily registrable and in absence thereof, it could not be held that the property (Vishnu Bhawan) was partitioned. The assessing authority, thus, assessed Vishnu Bhawan as one unit.

4. The order dated 18/8/1981 was carried in appeal at the instance of the assessee. The appellate authority set-aside the order of the assessing authority on 27/12/1983.

5. The Land & Building Tax Department challenged the order of the appellate authority by filing revision before the Divisional Commissioner, Jaipur. The Divisional Commissioner, Jaipur accepted the revision, set-aside the order of the appellate authority and restored the order of the assessing authority.

6. An application for rectification of the order of the Divisional Commissioner at the instance of the assessee was unsuccessful. It was then that the assessee approached this Court by filing the writ petition for quashing the notices dated 31/3/1980 and 3/7/1981 issued under Section 15-B

of the Act of 1964 and for setting-aside the order of the Divisional Commissioner, Jaipur. On formation of Rajasthan Taxation Tribunal, Jaipur, the matter was transferred to the Tribunal for disposal. After hearing parties, the Tribunal quashed the notices dated 31/3/1980 and 3/7/1981 issued under Section 15-B and also set-aside the order of the Divisional Commissioner, Jaipur. This is how, the matter has again come to this Court at the instance of the assessing authority and the State Government.

7. Mr.Banwari Lal Avasthi, Additional Government Advocate made two-fold submission:

(i) That Article 149 of the Constitution of India insist upon Comptroller and Auditor-General to exercise such powers in relation to the accounts of the Union Government and of the State Government and if on the basis of the audit objection, the assessing authority reopened the case and issued notices, it cannot be said that it was a case of change of opinion; and

(ii) That the consideration of the document of partition (family settlement) dated 3/9/1969 by the Taxation Tribunal is wholly erroneous. According to him, the proper consideration thereof would show that the partition was affected

through the said document and not prior thereto and since the said document was compulsorily registrable, in absence thereof, no legal partition of Vishnu Bhawan took place and the said property could not be held to have been partitioned pursuant to the said document.

5th July, 2007

8. Since the dictation of judgment could not be completed on 2nd July, 2007, for completion of judgment it was kept on the next day. However, on 3rd and 4th July, 2007 the matter could not be taken up and it was kept for today.

9. Today, at the outset, our attention was drawn by the counsel for

respondents to the Complete Exemption Scheme-III notified vide Notification No.F.4(67) F.D. /Tax / 2004-63, S.O.103, July 12, 2004 published in Rajasthan Gazette Extraordinary 4 (Ga) (II) on 12.7.2004.

10. The said notification reads thus:-

> "In exercise of the powers conferred under section 21 of the **Rajasthan Land and Buildings Tax Act, 1964** (Act No.19 of 1964), the State Government being of the opinion that it is expedient in the public interest to provide relief to the assessee in the assessed cases in which the annual tax liability does not exceed the limits and in the manner and conditions as mentioned below, it is hereby notified:-
>
> 1.that in case where any Residential, Industrial, Commercial and Semi Commercial land or building

> or both has already been assessed and the annual payable tax does not exceed Rs.10,000/- in case of Residential and Industrial and Rs.5,000/- in case of Commercial and Semi-Commercial for any one of the financial year upto 20002-2003 is hereby exempted from tax, interest and penalty retrospectively, from the date of liability or for some of the years if any for which the tax has not been paid.
>
> 2.that in case where any tax, interest or penalty have already been deposited it shall not be refunded."

11. The counsel for the respondents, thus, submitted that even if the subject property were treated as one unit, the tax as fixed by the assessing authority earlier was Rs.1000/- for each year and that in view of the afore-referred notification, the tax

was not liable to be paid since the State Government has exempted the tax liability where annual payable tax does not exceed Rs.10,000/- in case of residential properties.

12. Mr.Banwari Lal Avasthi, Additional Government Advocate does not dispute this position in the light of Complete Exemption Scheme-III notified by the State Government on 12/7/2004.

13. In this view of the matter, nothing remains to be decided by us on merits. Even if we hold that the subject property is one unit, annual payable tax being Rs.1000/- only, the said tax is exempted from payment under the aforesaid Scheme.

14. We, accordingly, dispose of the writ petition as infructuous with no order as to costs.

MOHAMMAD RAFIQ, J. **R.M. LODHA, J.**

anil